

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

<b>GUY SHELLEY,</b>	]	
<b>Plaintiff,</b>	]	<b>Civil Action No. 0:08-4038</b>
<b>-vs-</b>	]	<b><u>ORDER</u></b>
<b>UNITED STATES OF AMERICA,</b>	]	
<b>Defendant.</b>	]	

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This matter is before the Court pursuant to the report and recommendation submitted by United States Magistrate Judge Joseph R. McCrorey to whom it was referred for review under 28 U.S.C. § 636 and this Court's Local Rules. The plaintiff, Guy Shelley, proceeding *pro se* originally filed this action in the York County Magistrate's Court. Plaintiff appears to allege a property damage claim pursuant to the Federal Tort Claims Act. The defendant, the United States of America, subsequently removed this action to federal court on December 16, 2008. On December 23, 2008, the defendant filed a motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Since, the plaintiff is proceeding *pro se*, an order pursuant to Roseboro v. Garrison, 528 F.2d 309 (4<sup>th</sup> Cir. 1975) was entered by the Court on December 29, 2008. The Roseboro order, notified the plaintiff that a motion to dismiss had been filed and advised the plaintiff of the need for him to file an adequate response. Plaintiff was specifically advised that if he failed to respond adequately, the defendant's motion may be granted, thereby ending his case.

However, notwithstanding the notice given to the plaintiff, he has failed to respond to the

defendant's outstanding motion to dismiss. The Court issued a second order on February 4, 2009 once again advising plaintiff of the pending motion to dismiss. This order gave the plaintiff an additional fifteen (15) days to respond to the defendant's motion to dismiss. Plaintiff was warned that if he failed to respond this action would be recommended for dismissal with prejudice for failure to prosecute. Davis v. Williams, 588 F.2d 69, 70. Again, the plaintiff has not responded to the outstanding motion to dismiss. Therefore, the Magistrate Judge has recommended that this matter be dismissed for lack of prosecution pursuant to Rule 41 of the Federal Rules of Civil Procedure. Ballard v. Carlson, 882 F.2d 93 (4<sup>th</sup> Cir. 1989), cert. denied, 493 U.S. 1084 (1990). Upon review, the Court agrees.

#### I. TIME FOR FILING OBJECTIONS

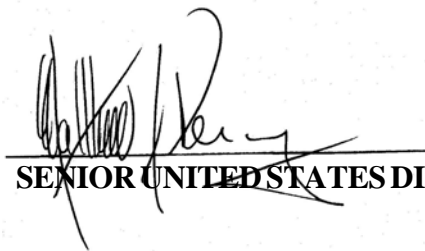
A plaintiff may object, in writing, to a magistrate judge's report within ten days after being served with a copy of that report. 28 U.S. C. §636(b)(1). Three days are added to the ten day period if the recommendation is mailed rather than personally served. The Magistrate Judge's report and recommendation was filed on February 25, 2008.

#### II. REVIEW OF MAGISTRATE JUDGE'S REPORT

The court is charged with conducting a *de novo* review of any portion of the Magistrate Judge's report to which specific objection registered and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). In this case, the plaintiff has not objected to the Magistrate Judge's report.

Nonetheless, this Court has thoroughly reviewed the record. Upon careful review, the Court concludes that the recommendation of the Magistrate Judge should be and is hereby approved. This action is hereby dismissed pursuant to Rule 41 of the Federal Rules of Civil Procedure.

**IT IS SO ORDERED.**



**SENIOR UNITED STATES DISTRICT JUDGE**

**Columbia, South Carolina.**

**March 19, 2009.**